

House Bill 237

By: Representatives Tumlin of the 38th, Keen of the 179th, Burkhalter of the 50th, Fleming of the 117th, Stephenson of the 92nd, and others

A BILL TO BE ENTITLED
AN ACT

To amend Title 51 of the Official Code of Georgia Annotated, relating to torts, so as to change provisions relating to liability of hospitals for acts or omissions of health care professionals; to provide that hospitals shall not be liable unless there is an actual agency or employment relationship; to require hospitals to provide certain notices; to provide rules for determining the existence or absence of agency, employment relationships, and independent contractor status; to provide for practice and procedure; to provide for related matters; to provide an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding immediately following Code Section 51-2-5 a new Code Section 51-2-5.1 to read as follows:

"51-2-5.1.

(a) As used in this Code section, the term:

(1) 'Health care professional' means a professional licensed as a chiropractor, clinical social worker, dentist, dietitian, medical doctor, marriage and family therapist, registered or licensed practical nurse, occupational therapist, optometrist, osteopathic physician, pharmacist, physical therapist, physician's assistant, professional counselor, podiatrist, psychologist, radiological technician, or respiratory therapist.

(2) 'Hospital' means a facility that has a valid permit or provisional permit issued by the Department of Human Resources under Chapter 7 of Title 31.

(b) Notwithstanding the provisions of Code Section 51-2-5, no hospital which complies with the notice provisions of either subsection (c) or (d) of this Code section shall be liable for the acts or omissions of a health care professional unless there exists an actual agency or employment relationship between the hospital and the health care professional.

(c) The hospital shall post a notice in the form and manner described in this Code section. Such notice shall:

1 (1) Be posted conspicuously in the hospital lobby or a public area of the hospital;

2 (2) Contain print at least one inch high; and

3 (3) Provide language substantially similar to the following:

4 'Some or all of the health care professionals performing services in this hospital are
5 independent contractors and are not hospital agents or employees. Independent
6 contractors are responsible for their own actions and the hospital shall not be liable for
7 the acts or omissions of any such independent contractors.'

8 (d) The hospital shall have the patient or the patient's personal representative sign a
9 written acknowledgment that contains language substantially similar to that set forth in
10 paragraph (3) of subsection (c) of this Code section.

11 (e) The notice required by this Code section shall be sufficient if it meets the requirements
12 of either subsection (c) or (d) of this Code section even if the patient or the patient's
13 personal representative did not see or read such notice for any reason, including but not
14 limited to medical condition or language proficiency.

15 (f) Whether a health care professional is an actual agent, an employee, or an independent
16 contractor shall be determined by the language of the contract between the health care
17 professional and the hospital. In the absence of such a contract, or if the contract is unclear
18 or ambiguous, a health care professional shall only be considered the hospital's employee
19 or actual agent if it can be shown by a preponderance of the evidence that the hospital
20 reserves the right to control the time, manner, or method in which the health care
21 professional performs the services for which licensed, as distinguished from the right to
22 merely require certain definite results.

23 (g) If the court finds that there is no contract or that the contract is unclear or ambiguous
24 as to the relationship between the hospital and health care professional, the court shall
25 apply the following factors to determine whether the hospital exercises a right of control
26 over the time, manner, or method of the health care professional's services:

27 (1) Factors that may be considered as evidence that the hospital exercises a right of
28 control over the time, manner, or method of the health care professional's services
29 include: the parties believed they were creating an actual agency or employment
30 relationship; the health care professional receives substantially all the employee benefits
31 received by actual employees of the hospital; the hospital directs the details of the health
32 care professional's work step-by-step; the hospital withholds, or is required to withhold,
33 federal and state taxes from the remuneration paid to the health care professional for
34 services to the patients of the hospital; and factors not specifically excluded in paragraph
35 (2) of this subsection; and

36 (2) Factors that shall not be considered as evidence that a hospital exercises a right of
37 control over the time, manner, or method of the health care professional's services

1 include: a requirement by the hospital that such health care professional treat all patients
2 or that any health care professional or group is obligated to staff a hospital department
3 continuously or from time to time; the hospital's payment to the health care professional
4 on an hourly basis; the provision of facilities or equipment by the hospital; the fact a
5 health care professional does not maintain a separate practice outside the hospital; the
6 source of the payment for the professional liability insurance premium for that health care
7 professional; the fact that the professional fees for services are billed by the hospital; or
8 any requirement by the hospital that such health care professional engage in conduct
9 required to satisfy any state or federal statute or regulation, any standard of care, any
10 standard or guideline set by an association of hospitals or health care professionals, or
11 any accreditation standard adopted by a national accreditation organization."

12 **SECTION 2.**

13 This Act shall become effective July 1, 2005, and shall apply with respect to causes of action
14 arising on or after that date. Prior causes of action shall be governed by prior law.

15 **SECTION 3.**

16 All laws and parts of laws in conflict with this Act are repealed.